

LEWIS BRISBOIS BISGAARD & SMITH LLP

CRAIG HOLDEN, SB# 174643

E-Mail: Craig.Holden@lewisbrisbois.com

ADRIANNA KOURAFAS, SB#301031

E-Mail: Adrianna.Kourafas@lewisbrisbois.com

633 West 5th Street, Suite 4000

Los Angeles, CA 90071

Telephone: 213.250.1800

Facsimile: 213.250.7900

Attorneys for Plaintiffs, EVOLV
HEALTH, LLC and EVOLVHEALTH
MEXICO SERVICIOS, S. de R.L. de C.V.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

EVOLV HEALTH, LLC and
EVOLVHEALTH MEXICO
SERVICIOS, S. de R.L. de C.V.,

Plaintiffs,

vs.

COSWAY USA, INC., d/b/a
ECOSWAY USA, INC., GLEN
JENSEN, JEFFREY N. ALDOUS and
VINCENT TAN,

Defendants.

CASE NO. 2:16-cv-01602-ODW (ASx)

**OPPOSITION TO NOTICE OF
MOTION AND MOTION TO
WITHDRAW AS COUNSEL FOR
PLAINTIFFS; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: May 1, 2017

Time: 1:30 p.m.

**Place: Courtroom 11
312 N. Spring Street
Los Angeles, CA 90012**

Hon. Otis D. Wright II
Courtroom: 11

Pre-trial Date: August 7, 2017

Trial Date: August 29, 2017

Plaintiffs Evolv Health, LLC, and EvolvHealth Mexico Servicios, S. de R.L. de C.V. (collectively "Plaintiffs") hereby oppose J. Robert Arnett II's ("Mr. Arnett") and Carter Scholer, PLLC's ("Carter Scholer") motion for leave to withdraw as counsel for Plaintiffs, and in support thereof submit the declarations of Craig Holden, Adrianna Kourafas, and Lewis Brisbois Bisgaard & Smith LLP (collectively referred to as "LBBS").

MEMORANDUM OF POINTS AND AUTHORITIES

Mr. Arnett and Carter Scholer bring an unfair motion for leave to withdraw as counsel for Plaintiffs on the eve of the fact and expert discovery deadlines, and just a few months from trial – after having served as lead counsel under a contingency agreement for this lawsuit (and its predecessor) for over 4 years. Withdrawal at this late stage, would be grossly prejudicial and unfair under the circumstances.

Mr. Arnett and Carter Scholer have handled this case and the related Texas action almost exclusively, and they possess the requisite knowledge of the evidence needed to prosecute this case that is scheduled for trial this coming August.

Substitution of LBBS or another firm as lead counsel would be too costly for Plaintiffs who have relied upon Carter Scholer as contingency counsel. It would be unfair after more than four years of investment with Carter Scholer as lead counsel, to withdraw over a minor dispute involving *already-paid* invoices, and discovery miscommunications that Plaintiffs believe they resolved with Mr. Arnett.

Plaintiffs respectfully request that this Court deny Mr. Arnett's and Carter Scholer's motion and order that they remain as lead counsel for Plaintiffs in this matter. In the event the Court is inclined to grant their request to withdraw, LBBS requests that it too be permitted to withdraw given its lack of involvement in this case and the related Texas action and the lack of a fee arrangement with LBBS for lead counsel representation. In the event the Court is inclined to grant Mr. Arnett's and Carter Scholer's request to withdraw but not LBBS's, LBBS and its attorneys request a continuance of trial and discovery dates and all other case deadlines so it can have sufficient time to review and digest the Texas Action, which is part and parcel of this action.

I. ARGUMENT

Unless good cause is shown and the ends of justice so require, no substitution or relief of attorneys will be allowed where it will cause delay in prosecution of the action. CD CA Rule 83-2.3.5. Failure of the client to pay agreed compensation is

1 not necessarily sufficient to establish good cause. CD CA Rule 83-2.3.2.¹
 2 Moreover, as can be seen from a case on which Mr. Arnett and Carter Scholer rely,
 3 withdrawal is not appropriate where there is possible prejudice to the interests of
 4 those entitled to have the case proceed. *People v. Prince*, 268 Cal. App. 2d 398, 406
 5 (1968). The disruptive impact that counsel's withdrawal would have on the case can
 6 also be a consideration for the court. *Austin Inv. Fund, LLC v. United States*, 2011
 7 U.S. Dist. LEXIS 120344, *3 (C.D. Cal. 2011), citing *Whiting v. Lacara*, 187 F.3d
 8 317, 320 (2d Cir. 1999). Withdrawal of counsel is not appropriate where
 9 withdrawal would seriously jeopardize a plaintiff's ability to prosecute his case.
 10 *Lacara*, 187 F.3d at p. 320. When it would be difficult for a plaintiff, if not
 11 impossible, to find replacement counsel that would be able to prepare a complicated
 12 case in time for trial, it would prejudice the plaintiff. See *Id.*

13 Despite Mr. Arnett and Carter Scholer's attempt to argue the contrary,
 14 Plaintiffs will be burdened by Mr. Arnett's and Carter Scholer's withdrawal. Of the
 15 remaining counsel, Mr. Gaubert has never made an appearance in this action, and
 16 LBBS has only represented Plaintiffs as local counsel for the purpose of assisting
 17 with local procedure, which LBBS has done to a limited extent. Gaubert Decl., ¶4;
 18 Holden Decl., ¶6.

19 Moreover, Mr. Arnett and Carter Scholer cannot claim that Plaintiffs failure
 20 to pay constitutes grounds for withdrawal when Plaintiffs have fulfilled their
 21 payment obligations to Mr. Arnett and Carter Scholer. Gaubert Decl., ¶¶4, 10-11.
 22 They have a payment plan in place for the damages expert and have otherwise paid
 23 all bills and invoices. *Id.*

24 Moreover, Mr. Arnett and Carter Scholer cannot claim a failure to respond to
 25 discovery requests constitutes grounds for withdrawal when Plaintiffs delay in
 26 _____

27 ¹ Some of the law cited to in the moving papers does not state what the movants purport it does.
 28 For example, in *Duchrow v. Forrest*, 215 Cal. App. 4th 1359, 1376 (2013) the court deals with the
 issue of payment to attorneys that have withdrawn from representation (for good cause).

1 response, if any, was due to a family emergency about which Mr. Arnett was aware.
 2 Gaubert Decl., ¶¶416-17, 19-20.

3 Mr. Arnett and Carter Scholer claim a purported breakdown of the attorney-
 4 client relationship with to the point that continued representation has been rendered
 5 unreasonably difficult by Plaintiffs. Plaintiffs have not made this determination.
 6 Quite the contrary. In fact, Plaintiffs disagree that they will be better served by being
 7 represented by new counsel. Given Mr. Arnett's unique and extensive knowledge
 8 regarding this matter that spans at least four years, and the fact that his firm is
 9 handling this matter under a contingency fee arrangement, it is nearly impossible for
 10 Plaintiffs to be able to find new counsel to try this case in less than six months.
 11 White Decl., ¶8. Moreover, it would be a financial hardship on Plaintiffs at this late
 12 date to be able to find substitute counsel to get up to speed in this matter. Id.
 13 Moreover, because Mr. Arnett's firm has already obtained a judgment in the Texas
 14 Action against Defendants related to the Defendants in the California case, there is
 15 no way to bring another contingency lawyer in because there is no additional
 16 contingency fee to share with new counsel. White Decl., ¶9. It would be an undue
 17 burden and financial hardship on Plaintiffs to be able to find substitute counsel. Id.

18 Indeed, Plaintiffs will be prejudiced by having the counsel that has
 19 represented them for over four years and has exclusive knowledge of the evidence
 20 needed to prosecute this case, which is part and parcel of the Texas Action,
 21 withdraw. Holden Decl., ¶7. Moreover, the other parties will be prejudiced by
 22 substitution of lead counsel, even if said counsel is LBBS, because it will take
 23 significant time for the new lead attorneys to obtain the requisite knowledge of the
 24 Texas Action to prosecute the case. Moreover, there is no retainer agreement
 25 between Plaintiffs and LBBS that would enable LBBS to take on the lead counsel
 26 role, and LBBS is not in a position to continue without such a retainer, which the
 27 Plaintiffs have not agreed to pay. Holden Decl., ¶8-9. Rather, the Plaintiffs continue
 28 to try to convince Mr. Arnett and Carter Scholer to remain as lead counsel.

1 In light of the foregoing, Plaintiffs respectfully request that Mr. Arnett's and
2 Carter Scholer's motion to withdraw be denied.

3 DATED: March 27, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

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5 By: /s/ Craig Holden

6 Craig Holden

7 Adrianna Kourafas

8 Attorneys for Plaintiffs, EVOLV

HEALTH, LLC and EVOLVHEALTH

9 MEXICO SERVICIOS, S. de R.L. de C.V.